

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Case No. 21-cr-260 (ECT/TNL)

Plaintiff,

v.

**ARRAIGNMENT NOTICE
&
ORDER**

Kevin Alan Aguilar-Moreno,

Defendant.

This matter is before the Court on Defendant Kevin Alan Aguilar-Moreno's Motion Continuance of Motion Filing Date and Motion Hearing. (ECF No. 17.) Defendant has also filed a Statement of Facts in Support of Exclusion of Time Under the Speedy Trial Act. (ECF No. 18.) Defendant requests a 45-day continuance of the deadline to file motions and the motions hearing scheduled for January 19, 2022, as he and his counsel require additional time to review and discuss discovery. (ECF No. 17 at 1; ECF No. 18 at 1.) Additional time is also needed to coordinate meetings with the Spanish interpreter. (ECF No. 17 at 1.) The Government has no objection to the requested continuance. (*Id.*)

Additionally, beginning on March 13, 2020, and continuing thereafter, the Honorable John R. Tunheim, Chief District Judge for the United States District Court for the District of Minnesota, has issued a series of General Orders in connection with the COVID-19 pandemic, addressing, among other things, criminal proceedings and trials.¹

¹ All General Orders related to the COVID-19 pandemic may be found on the Court's website at <https://www.mnd.uscourts.gov/coronavirus-covid-19-guidance>.

On December 6, 2021, Chief Judge Tunheim entered General Order No. 32, which allows limited in-person proceedings for defendants who decline to consent to conducting the proceeding using videoconferencing, or telephone conferencing if videoconferencing is not reasonably available. *See generally In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 32 (D. Minn. Dec. 6, 2021). General Order No. 32 states that because only limited in-person proceedings may be held each day, criminal proceedings may be continued until the date that the criminal proceeding takes place.

General Order No. 32 continues to encourage the use of videoconferencing in criminal proceedings and states that, with the defendant's consent, criminal proceedings will be conducted by videoconferencing, or telephone conferencing if videoconferencing is not reasonably available.² General Order No. 32 further provides that the presiding judge will enter orders in individual cases to extend deadlines and exclude time under the Speedy Trial Act to address delays attributable to COVID-19. **Accordingly, should Defendant file pretrial motions, counsel shall also file a letter indicating whether Defendant consents to a motions hearing by videoconference.** (*See also* ECF No. 16.)

Further, Defendant has not yet been arraigned on the Indictment. (*See* ECF No. 15.) An arraignment hearing will be held before the undersigned on **March 7, 2022, at 1:00 p.m., in Courtroom 9W**, Diana E. Murphy United States Courthouse, 300 South Fourth

² *See also* General Order No. 33, which went into effect on December 21, 2021, vacated General Order No. 31, and extended the Court's authorization to conduct certain criminal proceedings via video or telephone conference pursuant to the CARES Act "[b]ecause the emergency created by the COVID-19 outbreak continues to materially affect the functioning of court operations in the District of Minnesota." *In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 33 (D. Minn. Dec. 17, 2021).

Street, **MINNEAPOLIS**, Minnesota 55415. **Counsel shall also file a letter indicating whether Defendant consents to an arraignment by videoconference.**

Pursuant to 18 U.S.C. § 3161(h), this Court finds that the ends of justice served by granting a continuance outweigh the best interests of the public and Defendant in a speedy trial and such continuance is necessary to provide Defendant and his counsel reasonable time necessary for effective preparation and to make efficient use of the parties' resources. Based on all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Defendant's Motion for Continuance of Motion Filing Date and Hearing (ECF No. 17) is **GRANTED**.

2. The period of time from **December 22, 2021 through March 7, 2022**, shall be excluded from Speedy Trial Act computations in this case.

3. An arraignment hearing will be held before the undersigned on **March 7, 2022, at 1:00 p.m.**, in **Courtroom 9W**, Diana E. Murphy United States Courthouse, 300 South Fourth Street, **MINNEAPOLIS**, Minnesota 55415.

4. All motions in the above-entitled case shall be filed and served consistent with Federal Rules of Criminal Procedure 12(b) and 47 on or before **February 10, 2022**.³ D. Minn. LR 12.1(c)(1). Two courtesy copies of all motions and responses shall be delivered directly to the chambers of Magistrate Judge Tony N. Leung.⁴

5. **Counsel shall also file a letter on or before February 10, 2022, indicating whether Defendant consents to an arraignment and motions hearing by**

³ "Before filing a motion under Fed. R. Crim. P. 12(b), the moving party must confer with the responding party. The parties must attempt in good faith to clarify and narrow the issues in dispute." D. Minn. LR 12.1(b).

⁴ U.S. Mail or hand-deliver to 300 South Fourth Street, Suite 9W, Minneapolis, MN 55415.

videoconference.

6. **Counsel shall electronically file a letter on or before February 10, 2022, if no motions will be filed and there is no need for a motions hearing.**

7. All responses to motions shall be filed by **February 24, 2022**. D. Minn. LR 12.1(c)(2).

8. Any Notice of Intent to Call Witnesses⁵ shall be filed by **February 24, 2022**. D. Minn. LR 12.1(c)(3)(A).

9. Any Responsive Notice of Intent to Call Witnesses⁶ shall be filed by **March 1, 2022**. D. Minn. LR 12.1(c)(3)(B).

10. A motions hearing will be held pursuant to Federal Rules of Criminal Procedure 12(c) where:

- a. The Government makes timely disclosures and a defendant pleads particularized matters for which an evidentiary hearing is necessary;
or
- b. Oral argument is requested by either party in its motion, objection or response pleadings.

11. If required and subject to further order of the Court, the motions hearing shall be heard before Magistrate Judge Tony N. Leung on **March 7, 2022**, at **1:00 p.m.**, in **Courtroom 9W**, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street,

⁵ “When a party intends to call witnesses at a hearing on a motion under Fed. R. Crim P. 12(b), the party must file a notice within 35 days after the arraignment. The notice must identify the number of witnesses whom the party intends to call, the motion or motions that each witness will be addressing, and the estimated duration of each witness’s testimony.” D. Minn. LR 12.1(c)(3)(A).

⁶ “If after reviewing a notice under LR 12(c)(3), a party intends to call witnesses at the same hearing, that party must file a responsive notice within 38 days after the arraignment. The responsive party must identify the number of witnesses whom the party intends to call, the motion or motions each witness will be addressing, and the estimated duration of each witness’s testimony.” D. Minn. LR 12.1(c)(3)(B).

MINNEAPOLIS, Minnesota 55415. D. Minn. LR 12.1(d).

12. The trial date, and other related dates, will be rescheduled at a date and time to be determined before District Judge Eric C. Tostrud, Courtroom 3B, Warren E. Burger Federal Building and U.S. Courthouse, 416 North Robert Street, **SAINT PAUL**, Minnesota. Counsel must contact the Courtroom Deputy for District Judge Tostrud to confirm the new trial date.

Dated: December 28, 2021

s/Tony N. Leung
TONY N. LEUNG
United States Magistrate Judge
District of Minnesota

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